



BRB No. 15-0101

DONALD RANTA)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LS & I RAILROAD)	DATE ISSUED: <u>Aug. 24, 2015</u>
)	
and)	
)	
AMERICAN HOME ASSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of David Widener, District Director, United States Department of Labor.

Steven C. Schletker, Covington, Kentucky, for claimant.

Andrew Z. Schreck and Adrienne J. Gasser (Downs Stanford, P.C.), Sugar Land, Texas, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fees (OWCP No. 08-133088) of District Director David Widener rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless it is shown by the challenging party to be arbitrary, capricious, based on an abuse of discretion, or not in accordance with law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

On February 11, 2011, claimant filed a claim for disability and medical benefits for work-related injuries to his shoulders. Employer controverted the claim. As the

issues in dispute were not resolved before the district director, the case was referred to the Office of Administrative Law Judges on May 17, 2012. On April 26, 2013, the parties resolved their differences, with employer conceding that claimant is entitled to permanent total disability and medical benefits. On April 29, 2013, claimant filed with the administrative law judge the parties' stipulations. On May 17, 2013, the administrative law judge approved the stipulations and remanded the case to the district director.

Claimant's counsel sought an attorney's fee for services performed before the district director between March 19, 2011 and May 17, 2012 in connection with this claim. Counsel sought \$10,293.76, representing 38.6 hours of attorney services at a rate of \$250 per hour, and \$643.76 in expenses. Employer objected to the fee, challenging the hourly rate requested by counsel and five specific time entries. Claimant's counsel responded to the objections.

In his Compensation Order, the district director acknowledged employer's objections to the fee petition, reduced claimant's counsel's hourly rate to \$237.50, and awarded the number of hours sought by counsel. Consequently, the district director awarded claimant's counsel a fee of \$9,811.26, representing 38.6 hours of services at an hourly rate of \$237.59, and \$643.76 in expenses, payable by employer.¹ 33 U.S.C. §928(b).

On appeal, employer challenges the district director's fee award. Claimant responds, urging affirmance.

We affirm the district director's fee award. We reject employer's contention that the hourly rate should be reduced to \$200 due to the lack of complex issues, as this is not a valid basis for making an hourly rate determination. *Van Skike v. Director, OWCP*, 557 F.3d 1041, 43 BRBS 11(CRT) (9th Cir. 2009). With respect to the itemized entries challenged on appeal,² the district director found that the entries on April 9 and 12, 2011,

¹ The district director issued another compensation order awarding counsel a fee, payable by claimant, for services performed before March 19, 2011. 33 U.S.C. §928(c). This compensation order was not appealed.

² In his Compensation Order, the district director noted that employer objected to the services rendered by counsel on March 17 and 18, 2011. However, claimant's counsel had not sought to hold employer liable for these services and the district director thus declined to address the objection. *See* Compensation Order at 4; *see* n. 1, *supra*. On appeal, employer again objects to these two entries. We similarly decline to address employer's contention as employer has not been held liable for a fee for this work.

totaling 2.4 hours, were not excessive or duplicative,³ and that the April 16, 2012 entry did not consist of legal assistant work. The July 30, 2011 entry for .5 hour was performed while the case was before the district director, in advance of the claim's referral to the Office of Administrative Law Judges on May 17, 2012. Employer has not demonstrated that the district director erred in finding these entries compensable in full. Employer has failed to establish that the district director's fee award is arbitrary, capricious, based on an abuse of discretion or not in accordance with law. Therefore, the fee award is affirmed. *B&G Mining, Inc., v. Director, OWCP*, 522 F.3d 657, 42 BRBS 25(CRT) (6th Cir. 2008).

Accordingly, the district director's Compensation Order Award of Attorney's Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

³ This time related to counsel's preparation for the informal conference.